

USDA-FmHA

Form FmHA 1980-72

(Rev. 11-89)

Type of Loan: _____

Applicable 7 C.F.R. Part 1980

Subpart _____

**LOAN NOTE GUARANTEE
DISASTER ASSISTANCE FOR
RURAL BUSINESS ENTERPRISE (DARBE)
GUARANTEED LOANS
MAXIMUM LOSS PAYABLE BY FmHA
TO A HOLDER OR LENDER IS \$2,500,000**

Borrower	State
Lender	County
Lender's Address	Date of Note
	FmHA Loan Identification No.
	Lender's IRS ID Tax No.
	Principal Amount of Loan \$

The guaranteed portion of the loan is \$ _____ which is _____ (_____ %)

percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note

_____ in the face amount of \$ _____ and is number _____ of _____.

<u>LENDER'S IDENTIFYING NUMBER</u>	<u>FACE AMOUNT</u> \$	<u>PERCENT OF TOTAL FACE AMOUNT</u> %	<u>AMOUNT GUARANTEED</u> \$
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TOTAL

\$ _____ 100%

\$ _____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Disaster Assistance Act of 1989 does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Holders:

1. Any loss sustained by the Holder on the guaranteed portion and interest due on such portion up to a maximum aggregate amount of \$2,500,000. On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate losses exceed \$2,500,000, each Holder's loss will be prorated by the percentage of the guaranteed portion of the loan the holder owns.

B. The Lender the lesser of 1, or 2 below:

1. Any loss sustained by the Lender on the guaranteed portion including:
 - a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and
 - b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, but only to the extent that inclusion of such protective advances would not cause the total aggregate loss to exceed \$2,500,000, or
2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due thereon.

But only up to a maximum aggregate amount of \$2,500,000. On loans with single or multiple holders and a Lender who owns part of the guaranteed portion, if the aggregate losses exceed \$2,500,000, the Lender's loss will be prorated by the percentage of the guaranteed portion of the loan the Lender owns.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee-DARBE. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee-DARBE to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder.

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation, the interest on which is excludable from income, under Section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when Form FmHA 1980-73, "Assignment Guarantee Agreement--DARBE," is used. Loan evidenced by a single note may be assigned only by using Form FmHA 1980-73.

Definition of Lender.

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable Subpart 7 CFR of Part 1980. The Lender is also the party requesting a loan guarantee.

1. Loan Servicing.

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. Priorities.

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. Full Faith and Credit.

The Loan Note Guarantee--DARBE constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. If the note to which this is attached or relates provides for payment of interest on interest, then this Loan Note Guarantee--DARBE is void. In addition, the Loan Note Guarantee--DARBE will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Rights and Liabilities.

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee--DARBE by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. Payments.

Lender will receive all payments of principal, or interest, and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. Protective Advances.

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the extent provided in this Loan Note Guarantee--DARBE notwithstanding the guaranteed portion of the loan that is held by another.

7. Repurchase by Lender.

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. The Loan Note Guarantee--DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision. As per the terms of this guarantee the maximum loss payment will not exceed \$2,500,000 for principal, interest, and approved protective advances.

8. FmHA Purchase.

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase less Lender's servicing fee, within thirty (30) days after written demand to FmHA from Holder. The Loan Note Guarantee--DARBE will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the original demand letter of the Holder to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee--DARBE properly endorsed to FmHA or the original of the Assignment Guarantee Agreement--DARBE properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date or \$2,500,000, whichever is less. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand. On loans with multiple Holders and/or a Lender who owns part of the guaranteed portion, if the aggregate unpaid principal and unpaid interest on the guaranteed portion exceeds \$2,500,000, the Holder will be paid on a prorated basis--prorated by the percentage of the guaranteed portion of the loan the Holder owns.

The FmHA will promptly notify the Lender of its receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the borrower and State Director and remit the check(s) to the Holder(s).

9. Lender's obligations.

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee--DARBE.

10. Repurchase by Lender for Servicing.

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest on such portion. The Lender's servicing fee will be subtracted from these amounts. The Loan Note Guarantee--DARBE will not cover the note interest to the Holder on the guaranteed loans accruing after 90 days from the date of the demand letter of the Lender or FmHA to the Holder(s) requesting the Holder(s) to tender their guaranteed portion(s).

- a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.
- b. Any repurchase will only be made after the Lender obtains FmHA written approval.
- c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. Custody of Unguaranteed Portion.

The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. When Guarantee Terminates.

This Loan Note Guarantee--DARBE will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. Settlement.

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

14. Notices.

All notice and actions will be initiated through the FmHA _____

for _____ (State) with mailing address at the date of this instrument:

UNITED STATES OF AMERICA
 Farmers Home Administration

By: _____

Title: _____

 (Date)

Assumption Agreement by _____ dated _____, 19 ____

Assumption Agreement by _____ dated _____, 19 ____